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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,781	02/18/2004	De-Sheng Tsai	9286.32	2750

20792 7590 11/14/2007
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EXAMINER	
COLE, ELIZABETH M	

ART UNIT	PAPER NUMBER
1794	

MAIL DATE	DELIVERY MODE
11/14/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/780,781	TSAI ET AL.	
	Examiner	Art Unit	
	Elizabeth M. Cole	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 September 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *22-24,26-28 and 34-39* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *22-24, 26-28, 34-39* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 22-24, 26-28, 34-39 are rejected under 35 U.S.C. 102(a and e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Morman et al, U.S. Patent Application Publication 2003/0100238. Morman et al discloses an elastic thermally bonded web (see paragraph 0010) which has an elasticity such that it can be stretched to about 150 percent with an 83 percent recovery. See paragraph 0057. The fabric of Morman does not comprise elastomeric fibers. The fibers can mono or bicomponent fibers such as polyolefins. See paragraph 0052 and paragraph 0046. The nonwoven webs can be spunbonded, meltblown or carded webs. See paragraph 0052. The material of Morman is formed by providing a nonwoven web and then

subjecting the web to heat which is between the softening point and melting point of the fibers. The material is subjected to necking or drawing while it is being heated. While Morman does disclose a process of heating and drawing the fabric in order to impart elasticity to the fabric, it does not disclose the particularly claimed drawing ratio or strain rate. However, since the instant claims are drawn to a product, not a process, the burden is shifted to Applicant to come forward with evidence showing that any process differences result in an unobvious difference between the claimed invention and the prior art invention. The material of Morman can be bonded to elastic film layers. See paragraph 0059. With regard to the particular uses set forth in the dependent claims, since no structure is set forth in the claims, these limitations are taken as statements of intended use.

4. Applicant's arguments filed 9/11/07 have been fully considered but they are not persuasive. Applicant's amendment has overcome the Erdos reference.

5. With regard to Morman, Applicant argues that paragraph 0057 of Morman is hypothetical only because Morman only teaches conventional necking processes and a conventional process would not result in a material having the claimed properties. However, since Morman states in paragraph 0057 that if one wished to make the particular fabric they would first provide a fabric, they would provide a first fabric, tension the fabric and heat it when tensioned in order to provide the fabric having the claimed elongation and recovery, Morman does teach the claimed elongation and recovery parameters.

6. Applicant argues that the process limitations impart additional structure to the claimed fabric which is different than the Morman structure, because Morman states that the nonwovens cannot be stretched greater than the width of the original prenecked material, while the instant nonwoven can be stretched greater than the width of the original prenecked material. However, while the examiner agrees that this is a structural difference that would overcome the Morman reference, the instant claims do not include this limitation. Applicant points to Table 5 of the specification to support the contention that the process limitations impart this additional structural feature to the claimed nonwoven. However, the instant claims recite a range of drawing rates and strain rate at an undefined temperature, ("a temperature between the softening point and the melting point of the fibers for preparing the elastic thermally bonded web."). Table 5 is not commensurate with the scope of the claims because it shows values at a particular strain rate, presumably at a single temperature and a particular drawing rate. Further, it is noted that Table 5 is limited to particular basis weights and particular materials. Therefore, while it is agreed that if the claims either were amended to recite that the nonwoven can be stretched to a width greater than the width of the original prenecked material, (providing there is support for this limitation in the instant specification), that this would overcome the Morman reference, the showing as set forth in Table 5 is insufficient to overcome the Morman reference since the instant claims are much broader than what is shown in Table 5 and there is nothing on the record which would permit the results of Table 5 to be extrapolated to the broader claim.

7. The Declaration under 37 CFR 1.132 filed 9/11/02 is insufficient to overcome the rejection of claims based upon Morman as set forth in the last Office action because: while the Declaration states that the Declarant does not believe that Morman could have achieved the claimed elastic properties and that Morman's paragraph 0057 is a hypothetical example for use for calculation purposes, since Morman does state in paragraph 0057 that if one desired a fabric having certain properties that such a fabric could be obtained by providing, tensioning and heating the tensioned fabric, that Morman does teach the properties of elongation and recovery claimed.

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (571) 272-1475. The examiner may be reached between 6:30 AM and 6:00 PM Monday through Wednesday, and 6:30 AM and 2 PM on Thursday.

Mr. Terrel Morris, the examiner's supervisor, may be reached at (571) 272-1478.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

The fax number for all official faxes is (571) 273-8300.

/Elizabeth M. Cole/
Primary Examiner, Art Unit 1794

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